IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 29425 of 2004(C)

OS.1404/1993 of II ADDL.SUB COURT,TRIVANDRUM
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PETITIONER:

M. MARTHANDAN, RESIDING AT `UTHRITTATHI'
P.P.NO.12/1146, PALLICHAL P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.L.MOHANAN

RESPONDENTS:
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1. **M. SUBRAMANIAM, T.C.NO.38/419**
   (OLD T.C.416/35) CHENTHITTA JN., KOCHAR ROAD,
   THIRUVANANTHAPURAM-695 023.

2. **M. RAMASWAMY, `MAKAYIRAM' MANICKAM**
   PILLAI GARDENS,, JAGATHY, THIRUVANANTHAPURAM.

3. **M. SIVANANDAN, T.C.NO.38/419**
   (OLD T.C.416/35), CHENTHITTA JN., KOCHAR ROAD,
   THIRUVANANTHAPURAM-695 023.

4. **M. MOHAN, RESIDING AT DO. DO.**

5. **M. BHAGAVATHY AMMA, RESIDING AT DO. DO.**

6. **S.M. FAROOQUE, S.M. SALEEM STORE,**
   CHALAI, THIRUVANANTHAPURAM, RESIDING AT
   SALEEM VIHAR, KOTTUVILAKAM,
   THIRUVANANTHAPURAM.

...2/-

7. CHINMAYA EDUCATIONAL COMPLEX,
REP. BY ITS DIRECTOR, CHINMAYA EDUCATIONAL
COMPLEX VAZAHUTHACADU, THIRUVANANTHAPURAM.

8. CANARA BANK, CANTONMENT BRANCH,
THIRUVANANTHAURAM, REP. BY ITS BRANCH MANAGER.

9. PUNJAB AND SIND BANK,
PULIMOODU, M.G. RAOD, THIRUVANANTHAPURAM,
REP. BY ITS BRANCH MANAGER.

10. UNITED BANK OF INDIA, PRESS ROAD,
THIRUVANANTHAPURAM, REP. BY ITS BRANACH MANAGER.

11. STATE BANK OF TRAVANCORE,
VAZHUTHACAUD, THIRUVANANTHAPURAM, REP. BY
ITS BRANCH MANAGER.

12. R. MANOJ KUMAR, `MAKAYIRAM', MANICKAM
PILLAI GARDENS, JAGATHY, THIRUVANANTHAPURAM.

13. R. VINOJ KUMAR, RESIDING AT DO. DO.

14. S. SREEKANTH, T.C.NO.38/419
(OLD T.C.416/35) CHENTHITTA JN., KOCHAR ROAD,
THIRUVANANTHAPURAM-695 023.

15. S. ARAVIND, RESIDING AT DO. DO.

16. S. ARUN, RESIDNG AT DO. DO.

17. M/S. R. MANICKAM PILLAI, A REGISTERED
PARTNERSHIP FIRM HAVING ITS REGD.OFFICE
KOTHUVAL STREET, CHALAI, THIRUVANANTHAPURAM,
REP. BY ITS MANAGING PARTNER.

18. M/S. MANICK RETRADING COMPANY
A REGISTERED PARTNERHIP FIRM, HAVING ITS OFFICE
AT KOCHAR ROAD, CHENTHITTA, THIRUVANANTHAPURAM
REP. BY ITS MANAGING PARTNER.

...3/-

19. M/S. MANICK COMMERCIAL CORPORATION
A REGISTERED PARTNERSHIP FIRM, REGISTERED
OFFICE, AYURVEDA COLLEGE JUNCTION,
M.G. ROAD, THIRUVANANTHAPURAM,
REP. BY ITS MANAGING PARTNER.

BY ADV. SRI.RAM MOHAN.G for R7
SRI.G.P.SHINOD
SRI.MANU V.
SRI.N.RAJAGOPALAN NAIR for r8
SRI.R.S.KALKURA for R11
BY GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.29425/2004 C

APPENDIX

PETITIONER'S EXHIBIT:

EXT.P1: COPY OF THE ORDER DTD. 24/07/2004.

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 29425 of 2004

Dated this the 13th day of August , 2007

JUDGMENT

Strenuous and persuasive submissions of the learned counsel for the petitioner notwithstanding, I am unable to agree that Ext.P1 order, in which the learned Subordinate Judge finds that the valuation of the suit presently made by the plaintiffs is not proper, is vitiated to the extent of warranting correction under the supervisory jurisdiction of this court under Article 227. The essential question is whether the suit is to be valued under Section 37(1) or Section 37 (2) of the Court Fees and Suits Valuation Act. According to the plaintiff/petitioner the valuation is to be made under Section 37 (2) of the Act, as he is in joint possession. But, as noticed by the learned Subordinate Judge, there are averments in the plaint which will indicate that at least a portion of the plaint schedule property has been conveyed to a stranger and there is no averment in the plaint that he is in joint possession. Though the averments in the plaint are to be accepted prima facie for determining the question of valuation and court fee, in the instant case cumulative effect of the averments in the

plaint itself will show that valuation presently made by the plaintiffs is not proper.

Challenge against the impugned order fails. The writ petition will stand dismissed.

PIUS C. KURIAKOSE,
JUDGE.

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